

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 24828 of 2002

Between:

Mada Nageswara Rao, S/o.Guru Murthy

R/o.Parvathipuram, Vizianagaram District.

..... PETITIONER

AND

1. The Recovery Officer,

Employees' Provident Fund Organization,

Sub-Regional Office, VUDA Layout,

Marripalem, Visakhapatnam

2. The Sub-Regional Provident Fund Commissioner,

Employees Provident Fund Organisation,

Sub-Regional Office, VUDA Layout,

Marripalem, Visakhapatnam

3. Smt.Potta Bharathi, W/o.P.S.A.Narasimha Murthy,

D.No.22-74-61, Near Seetharamaswamy Temple,

Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction, particularly a writ in the nature of Mandamus, declaring the action of respondents 1 and 2 herein in issuing the notice

Ref.No.A.P./RECY/22879/VST/ 2002/Dt.7.5.2002 as illegal and unconstitutional and further direct the respondents 1 & 2 herein not to take any steps against the petitioner u/S.8B of the Employees' Provident Fund & Miscellaneous Provisions Act.

Counsel for the Petitioner:MR.G.SIMHADRI, REPRESENTING K.V.SUBRAMANYA NARASU

Counsel for the Respondent Nos.1 and 2: MR.R.N.REDDY

Counsel for the Respondent No.3: T.S.Anand

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24828 OF 2002

ORDER:

M/s.Veerabhadra Picture Palace, represented by its Proprietrix Smt.Potta Bharathi, third respondent herein, is an establishment covered by the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act). As the establishment did not pay the amount towards Provident Fund (PF), the same was determined and a certificate for recovery was issued by the Assistant Provident Fund Commissioner. The Recovery Officer, first respondent herein, issued a notice dt.7.5.2002 to third respondent calling upon her to pay an amount of Rs.2,50,244.50 (Rupees two lakh fifty thousand two hundred and forty four and fifty paise only) as per the certificate dt.9.4.2002. She was also informed that in case of default, action would be taken in accordance with the provisions of Section 8B to 8G of the Act.

The petitioner herein, who claims to be lessee of the cinema theatre, filed the Writ Petition challenging the notice dt.7.5.2002 issued by first respondent on the ground that recovery certificate is in respect of PF arrears prior to 4.10.2000 when the petitioner allegedly entered into agreement with third respondent and therefore petitioner is not liable for any action by respondents 1 and 2.

This Court while admitting the Writ Petition passed interim orders on 16.12.2002 in W.P.M.P.No.31285 of 2002 observing that it shall be open to respondents 1 and 2 to enforce the impugned proceedings against third respondent and not against petitioner until further orders. Respondents 1 and 2 have now moved this Court by filing W.V.M.P.No.2059 of 2004 along with a counter affidavit. The third respondent also filed W.V.M.P.No.733 of 2003 seeking vacation of the interim order. Though, interlocutory applications are listed, with the consent of the learned counsel for the parties, the Writ Petition itself was heard and is being finally disposed of.

In the counter filed on behalf of respondents 1 and 2, it is stated that as per the provisions of Section 17B of the Act, the transferor and the transferee are equally

liable for payment of PF arrears. No reply affidavit is filed denying the counter averments.

Learned counsel for the petitioner, Sri G.Simhadri submits that the theatre owned by third respondent was brought to sale for recovering the amount decreed by Debts Recovery Tribunal (DRT), Visakhapatnam, that the theatre was sold in auction for an amount of Rs.50,00,000/- (Rupees fifty lakh only) and that as the third respondent paid the amount, the attachment was lifted by the DRT. He also submits that the lease between petitioner and third respondent is not subsisting and therefore no action can be taken against petitioner. These submissions are refuted by the learned Standing Counsel for Employees Provident Fund Organization, Sri R.N.Reddy.

Section 17B of the Act reads as under.

17B. Liability in case of transfer of establishment:- Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period upto the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

A plain reading of the above provision would show that where an employer in relation to an establishment transfers the establishment by sale, gift, lease or licence, the transferor and the transferee shall be jointly and severally liable to pay the PF contributions and other sums due from the establishment under the provisions of the Act. The proviso makes it clear that the liability of the transferee shall be limited to the value of the assets obtained by the transferor. Admittedly, the petitioner was a lessee of the cinema theatre for the period from 4.10.2000 till the theatre was delivered to third respondent in April, 2004 (as disclosed by the petitioner). The petitioner is also jointly and severally liable for making payment of PF arrears. It is always open to respondents 1 and 2 to proceed against the petitioner as well. The submission of the learned counsel for the petitioner that the petitioner cannot be held responsible is therefore rejected as devoid of merit.

In the result, the Writ Petition, filed by lessee challenging the notice issued by second respondent to third respondent, employer of the establishment, is devoid of merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

18.8.2004

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To

1. The Recovery Officer,

Employees' Provident Fund Organization,
Sub-Regional Office, VUDA Layout,
Marripalem, Visakhapatnam

2. The Sub-Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, VUDA Layout,
Marripalem, Visakhapatnam

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